Award No. 14237
Docket No. PC-15641

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert Schmertz, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Conductor E. P. Kinsinger, Los Angeles District, that Rules 25 and 64 of the Agreement were violated, when:

1. On September 16, 1964, three Pullman cars in service, namely, Mississippi Rapids, Catalpa Falls and Imperial Peak, were parked at Williams Junction, Arizona, occupied by passengers and/or their possessions from 4:25 A. M., September 16th, until 10:35 P. M., same date, without the services of a Pullman conductor.

2. Because of this violation, we now ask that Conductor Kinsinger be compensated for a deadhead trip from Los Angeles to Williams Junction, under the terms of Rules 7 and 22; station duty from 4:15 A. M., September 16, to 10:45 P. M., same date, under the provisions of Rules 10 and 22, and for a deadhead trip Williams Junction back to Los Angeles, under the provisions of Rules 7 and 22.

Rule 38 is also involved.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties, bearing the effective date of September 21, 1957, revised January 1, 1964, and amendments thereto, on file with your Honorable Board, and by this reference is made a part of this submission the same as though fully set out herein.

I.

On September 16, 1964, at 4:25 A. M., AT&SF train No. 2 set out three Pullman cars at Williams Junction, Arizona. These cars were placed on a siding, and the passengers who had purchased space in these cars were allowed to occupy the cars until 7:00 A. M., September 16th, at which time they detrained and made a trip by bus to Grand Canyon.

The Organization progressed the claim on appeal to the Third Division, National Railroad Adjustment Board, in letter dated June 28, 1965 (Exhibit E).

(Exhibits not reproduced.)

OPINION OF BOARD: The claim in this case is that the Carrier by failure to assign a Pullman conductor when, on September 16, 1964, it parked three Pullman cars at Williams Junction, Arizona violated Rule 64 of the Agreement.

After an examination of Rule 64 it is clear that the only possible portion pertinent to this case is subsection (a). Rule 64(e) only applies to arrival of conductors at foreign or home terminals — neither of which was Williams Junction.

The Organization has contended that prior awards between the same parties dealing with similar or identical facts have held that where two or more cars are laid over as they were here, failure to assign a Pullman conductor constituted a violation of Rule 64(a). Indeed recent Award 14016 (Weston) between these same parties in which the identical type of layover occurred at Williams Junction held the Carrier to have violated the agreement.

The Carrier representative acknowledges that this Board's awards on this issue do find the Carrier's practice of not assigning Pullman conductors to be contract violation. It is contended, however, that these awards follow on erroneous precedent — namely Awards 3759 (Swaim)and that the later awards which also rely upon Vice President Boeckelman's testimony before the Mediation Board misinterpret the meaning and intent of that testimony.

According to the Carrier representative, where Award 3759 and subsequent awards are in error is that they conclude without any basis that the cars in layover status are part of a "train." The Boeckelman testimony, according to the Carrier, is erroneously considered to be demonstrative of Carrier's agreement with the Board's interpretation, when in fact it is a request for a rule change which would correct erroneous Board decisions.

The Carrier representative has, therefore, requested the Board to review Award 3759 and subsequent awards with a view toward their reversal because of palpable error. There is no doubt in my mind that a blind adherence to precedent is neither the function of this Board nor is it sound labor relations. It has been said with some truth that "A foolish consistency is the hobgoblin of small minds." By the same token much damage can result if this Board indiscriminately reverses itself and thereby establishes two or more lines of authority on each issue. Litigation will be encouraged and forum shopping will become rewarding.

Weighing these two considerations it would appear that a line of awards involving the same parties all following the same line of reasoning should only be reversed when their outcome is so outrageous as to shock this Board's sense of justice. It should be noted that great weight is placed upon the fact that the same parties are involved. Where different parties are involved clearly the Board would have more flexibility because they in effect had not previously litigated the issue.

In light of these considerations review has been made of the prior awards on this subject together with the Boeckelman testimony.

In Award 3759 (Swain) the Board said:

"When we consider all of the facts of this particular case we are of the opinion that these five cars during all of the time they were in Denver constituted a part of a train within the meaning of Rule 64(a) . . ."

What were "the facts of this particular dispute"? As we see them, briefly, the Board found:

1. That the cars remained at all times a part of the "Exposition Flyer,"

2. That the switching by terminal engines and the 5½ hour layover did not change its status as part of the "Exposition Flyer,"

3. That the provision not to require a conductor on military trains was demonstrative of the parties' belief that there were to be exceptions to the rule, i.e., that conductors would be assigned to layover of other trains, and

4. That the Carrier subsequent to the filing of the claim in 3759 but prior to the award adopted the practice urged by the Organization.

The Carrier in Award 3759 (Swaim) in his submission stated:

"It is significant to note that none of the paragraphs cited by the Petitioner [Rule 64(a), (b) and (c)] is even remotely concerned with the question of whether or not a conductor is required to man cars laying over at some point between terminals. Rather, these provisions have to do with 'trains while carrying * * * more than one Pullman car * * * in service,' 'trains carrying one Pullman car * * * in service' and a 'combined service movement of two Pullman cars.' The Management fully complied with these provisions by providing a Pullman conductor on the 'Exposition Flyer' the entire distance the train carried Pullman cars in service."

The Carrier also stated elsewhere in his submission:

"Accordingly, in compliance with paragraph (a) of Rule 64, Pullman conductors operated on this train the entire distance that it carried Pullman cars in service, i.e., Chicago to Oakland."

From the foregoing it is not entirely clear whether the Carrier is contending that the cars were not in service during layover or whether they were not a train. On balance it would appear that he considered them not to be in service but still part of the "Exposition Flyer." The language ". . . on the Exposition Flyer the entire distance the train carried Pullman cars in service" and "the entire distance it carried cars in service, i.e., Chicago to Oakland" clearly leaves the implication that cars on layovers are, in the Carriers opinion not in service.

The Board in its opinion makes a finding that the cars were "in service" while they were in Denver. The basis of this finding was that:

"Passengers were allowed to remain in the cars all of the time between arrival and departure, and were permitted to come and go from the cars while the cars were in the station. The personal effects and belongings of all the through passengers remained in the cars."

In review of 3759 we therefore must conclude that the key issue raised by the Carrier was whether the cars were "in service," not whether they were part of a train. The Carrier appeared to concede that they were part of a train — the Exposition Flyer.

The Board, however, considered both elements i.e., "in service" and "part of a train" and found that each were satisfied. We have above set forth the Board's reasons for so finding and we see no reason to reverse these findings.

Award 4814 is consistent with Award 3759 in that it finds cars to be "in service" but not part of train because the train had gone on to New York. Indeed it cites 3759 mainly for a determination of when cars are in service. It also establishes at least one factor of when two or more cars are not part of a train.

Award 5936 adds another element of what is not a train — namely cars switched out of a train, uncoupled and destined for cities other than the city for which the original train was destined.

Again Award 3759 is cited only to determine whether the cars were in service. They were not part of a train because they were on different tracks waiting for different trains.

Award 6475 presents the same problem to us. As we understand it the Board found that a conductor should remain on a single Pullman car awaiting pickup in Pittsburgh because the train it previously was attached to carried more than one Pullman. We quote:

"In the instant case a Pullman conductor was required on the train . . . [because] . . . the train carried more than one Pullman car as required by Rule 64(a). Under such circumstances a Pullman conductor from Columbus, Ohio to Pittsburgh, Pa., has the right to be in charge of the Pullman car until his duties can be transferred . . ."

We question the soundness of this award in the light of the awards prior thereto which would seem to say that a car uncoupled, standing alone and waiting for a train to pick it up does not constitute "part of a train." This award would conclude that a single car remains part of a train until picked up by another train.

Award 9176 in our opinion raises the same questions as did 6475 in that it appears to confuse a switching situation with that in which cars are to be vacated. Rule 64(e) in our opinion applies to the end of a trip where passengers may be allowed to sleep until a reasonable hour before being put off.

It does not apply to those situations in which one train drops off a car and another later picks it up. The error in that award in our opinion is the Board's failure to include the requirement that the cars be vacated. The Board only required that passengers be allowed to remain on beyond arrival time which would include [and we think incorrectly] switching. It would also re-

quire the conclusion as did Award 6475 that the car in question remained a part of the original train until picked up by the second train.

Such a concept would also seem to be at variance with Award 10307 in which cars cut out of one train and awaiting pickup by a second were found to be "parts of train to which they would later be attached." Rather than a part of the original train. This award cited 3759 as precedent for this concept. We cannot agree because in 3759 the cars always remained part of the "Exposition Flyer" even though switched around while in this case they started out as part of Train No. 32 and were cutout to await pickup of Train No. 30. Award 10373 (McDermott) had the same facts and result as 10307 and our comments regarding 10307 apply to it also.

Award 12592 (Kane) is pertinent only in that it adds to the definition of what constitutes cars in service. The error made by the Carrier was a failure to assign the conductor on a round trip basis but the award states "In the facts before us the cars were in service without a conductor which is a violation of Rule 64." We think this fails to consider whether the cars were part of a train or not and from the facts known to us we are unable to make any conclusion on this issue.

Award 13486 (Hall) has facts similar to this case. The Board in that case undertook a review of its prior awards on this subject and found them not to be in error.

Award 3759 was cited as a correct holding and a precedent upon which Award 13486 could rest. In effect the Board said that where passengers pay for a through trip, have use of the cars, leave their baggage on board the cars even during layover should be considered in service and part of a train and therefore should have a Pullman conductor.

The most recent case on this subject is Award 14016 (Weston) in which the facts are identical to matter before us except for the dates of occurrence. In that case the Board found the cars to be "in service" and "a train." The Board appeared to rely heavily upon Award 12592 and the Boeckelman testimony.

Taking all these cases together we are led to the following conclusions:

1. In the first case in which this issue arose, i.e., Award 3759 the issue was whether the cars were "in service" not whether they were "a train." That they remained a part of the "Exposition Flyer" was not disputed.

2. The Boeckelman testimony has been incorrectly treated as agreement in principle with the awards rather than as a practical attempt to rectify or change a situation with which the Carrier disagreed.

3. While the awards do not set forth a precise definition of "a train" they do establish usable characteristics.

4. The awards clearly set forth criteria for determining cars "in service."

5. With certain exceptions, which we have noted above, the awards dealing with 64(a) do not appear to be so outrageous as to cause us to upset principles which have prevailed for a substantial period of time and which the parties may predictably apply. That we might reach a different conclusion concerning the application of Rule 64(a) were we to have the issue **de novo** is not sufficient reason for us to establish a new line of authority on this issue and thereby create greater problems than we solve. This is particularly true in light of Award 14016 between the same parties on the same facts.

We therefore find that two or more Pullman cars remaining in service, but on a layover at a situs prior to their final destination, which will be picked up intact for continuation of a clearly defined through trip, should be considered "a train" within the meaning of Rule 64(a).

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1966.

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